

HOUSE BILL 179

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; ENACTING THE PATIENT SAFE STAFFING ACT; REQUIRING HOSPITALS TO ESTABLISH STAFFING LEVELS FOR HOSPITAL NURSING UNITS; GIVING A NURSE THE RIGHT TO REFUSE AN ASSIGNMENT THAT CONFLICTS WITH ESTABLISHED STAFFING LEVELS OR THAT IS NOT WITHIN THE NURSE'S SCOPE OF PRACTICE; REQUIRING HOSPITALS TO POST AND REPORT THEIR DAILY HOSPITAL NURSING UNIT PATIENT CENSUS AND STAFFING LEVELS; MAKING THE DEPARTMENT OF HEALTH RESPONSIBLE FOR POSTING HOSPITAL REPORTS ON THE DEPARTMENT OF HEALTH'S WEBSITE FOR CONSUMERS; AUTHORIZING THE DEPARTMENT OF HEALTH TO ENFORCE COMPLIANCE WITH THE PATIENT SAFE STAFFING ACT THROUGH PENALTIES AND CORRECTIVE ACTION; AUTHORIZING THE DEPARTMENT OF HEALTH TO PROMULGATE RULES TO IMPLEMENT THE PATIENT SAFE STAFFING ACT; PROVIDING WHISTLEBLOWER PROTECTION TO EMPLOYEES WHO FILE A GRIEVANCE OR COMPLAINT UNDER THE PATIENT SAFE STAFFING ACT; MAKING AN

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1 APPROPRIATION.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

4 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
5 cited as the "Patient Safe Staffing Act".

6 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
7 Patient Safe Staffing Act:

8 A. "ancillary staff" means a certified nurse  
9 assistant, a medication aide, an obstetric technician, a  
10 gastroenterology technician, an emergency room technician, an  
11 operating room technician, a behavioral health aide, a unit  
12 secretary, a nursing aide, an orderly and any other personnel  
13 who assist in the provision of nursing care;

14 B. "committee" means a nursing staffing committee;

15 C. "department" means the department of health;

16 D. "hospital" means any general or special hospital  
17 licensed by the department, whether publicly or privately  
18 owned;

19 E. "nurse" means a registered nurse and a licensed  
20 practical nurse; and

21 F. "unit" means a hospital nursing unit.

22 SECTION 3. [NEW MATERIAL] COMMITTEE REQUIRED.--A hospital  
23 shall have a nursing staffing committee composed of eleven  
24 members as follows:

25 A. seven nurses who provide direct patient care but

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1 are not hospital nurse managers or hospital administrators, at  
2 least one of whom provides direct care in a nurse specialty  
3 unit; and

4 B. four other qualified persons as determined by  
5 the hospital.

6 SECTION 4. [NEW MATERIAL] DUTIES OF COMMITTEE.--The  
7 committee shall:

8 A. develop a staffing plan for each of the  
9 hospital's units;

10 B. select outcome indicators for each unit from  
11 among the national database of nursing quality indicators,  
12 hospital compare, patient satisfaction surveys and such other  
13 appropriate standards as determined by the committee;

14 C. conduct an annual or more frequent review of the  
15 staffing plan for each unit to update or modify the staffing  
16 plan as determined by the committee; and

17 D. conduct an annual or more frequent review of  
18 outcome indicators for each unit to update or modify the  
19 outcome indicators as determined by the committee.

20 SECTION 5. [NEW MATERIAL] NURSING STAFFING PLAN  
21 REQUIREMENTS.--Each unit's staffing plan shall:

22 A. specify the minimum number of nurses and  
23 ancillary staff required for each shift on the unit based upon  
24 the level of intensity of care required by patients and the  
25 variability in the number of admissions, discharges and

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1 transfers under existing conditions;

2 B. take into account conditions or circumstances  
3 specific to a rural, general or acute care hospital;

4 C. ensure that a nurse receives adequate  
5 orientation before being assigned to a unit; and

6 D. specify circumstances, such as a declared state  
7 of emergency, under which compliance with the staffing plan may  
8 be waived.

9 SECTION 6. [NEW MATERIAL] NURSING STAFFING LEVELS.--

10 A. Nursing staffing levels shall take into  
11 consideration:

12 (1) recommendations from the hospital's chief  
13 nursing officer, direct patient care nurses, ancillary staff,  
14 professional nursing organizations and other appropriate  
15 resources as determined by the committee;

16 (2) the characteristics of patients in each  
17 unit, including patient acuity as well as variability in the  
18 number of discharges, admissions and transfers per shift;

19 (3) available medical and health information  
20 technology and systems resources;

21 (4) the education, training and experience of  
22 nurses who provide direct patient care for the purpose of  
23 staffing a unit with an equal mix of more-experienced and less-  
24 experienced nurses; and

25 (5) such other appropriate factors as

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1 determined by the committee.

2 B. Nursing staffing levels for each unit shall be  
3 determined by majority vote of the committee.

4 C. A hospital shall formulate and adopt an  
5 algorithm for maintaining nursing staffing levels determined by  
6 the committee, which may require the hiring of additional  
7 nurses.

8 D. A hospital shall not achieve nursing staffing  
9 levels with mandated overtime.

10 SECTION 7. [NEW MATERIAL] RIGHT TO REFUSE ASSIGNMENT.--A  
11 nurse may refuse an assignment if:

12 A. the nurse lacks the requisite education,  
13 training and experience to ensure patient safety; or

14 B. the assignment is outside the nurse's scope of  
15 practice.

16 SECTION 8. [NEW MATERIAL] HOSPITAL POSTING AND REPORTING  
17 OF NURSING STAFFING LEVELS.--

18 A. Within one hour of the start of each shift, a  
19 hospital shall conspicuously post a daily report in each of its  
20 units, next to posted patient rights, that contains the:

21 (1) actual patient census for each shift in  
22 that unit;

23 (2) staffing level for each shift, according  
24 to the staffing plan for such unit; and

25 (3) actual staffing level for each shift in

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1 that unit.

2 B. The daily report shall include nurses and  
3 ancillary staff working in the unit.

4 C. On a quarterly basis, a hospital shall  
5 electronically submit to the department for public disclosure  
6 on the department's website, on a date and in a format and form  
7 prescribed by the department, an accurate report containing  
8 the:

9 (1) information required in Subsection A of  
10 this section for each day of the previous quarter; and

11 (2) number of daily admissions, discharges and  
12 transfers for each shift of each unit.

13 SECTION 9. [NEW MATERIAL] DUTIES OF DEPARTMENT.--The  
14 department shall:

15 A. prescribe the format, form and due date for a  
16 hospital's quarterly submission of the report required of a  
17 hospital pursuant to Subsection C of Section 8 of the Patient  
18 Safe Staffing Act. The department shall require information  
19 contained in each hospital's quarterly reports to be reported  
20 in a uniform and clearly understandable format that permits  
21 consumers of hospital services to make meaningful comparisons  
22 of nursing staffing levels;

23 B. promptly publish each quarterly report required  
24 of a hospital pursuant to Subsection C of Section 8 of the  
25 Patient Safe Staffing Act on its internet website for public

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1 inspection;

2 C. periodically audit the information contained in  
3 a quarterly report required of a hospital pursuant to  
4 Subsection C of Section 8 of the Patient Safe Staffing Act;

5 D. enforce a hospital's compliance with the  
6 provisions of the Patient Safe Staffing Act and with any  
7 related rules promulgated by the department to implement the  
8 provisions of that act through the imposition of penalties and  
9 corrective action, which information shall also be published on  
10 the department's website proximate to the quarterly reports  
11 required pursuant to Subsection C of Section 8 of the Patient  
12 Safe Staffing Act; and

13 E. promulgate such rules as are necessary to  
14 implement and enforce the provisions of the Patient Safe  
15 Staffing Act.

16 SECTION 10. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--A

17 hospital shall not discriminate or retaliate in any manner  
18 against an employee as a result of a grievance or complaint  
19 initiated by the employee relating to:

20 A. a committee or plan;

21 B. the posting or reporting of, or the failure to  
22 post or report, daily nursing staffing level information  
23 required by the Patient Safe Staffing Act; and

24 C. the exercise of the right to refuse an  
25 assignment pursuant to the Patient Safe Staffing Act.

1           SECTION 11. APPROPRIATION.--

2           A. One hundred thousand dollars (\$100,000) is  
3 appropriated from the general fund to the department of health  
4 for expenditure in fiscal year 2017 to undertake the duties and  
5 activities described in Section 9 of the Patient Safe Staffing  
6 Act, to be allocated as follows:

7                         (1) sixty-five thousand dollars (\$65,000) for  
8 staffing; and

9                         (2) thirty-five thousand dollars (\$35,000) for  
10 expenses associated with the department's internet website to  
11 ensure that required hospital reports are posted and available  
12 to consumers.

13           B. Any unexpended or unencumbered balance remaining  
14 at the end of fiscal year 2017 shall revert to the general  
15 fund.

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